

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELMER EUGENE WALKER,

Plaintiff,

v.

JENNA NELSON, et al.,

Defendants.

No. 2:22-cv-01327 KJM DB P

ORDER


Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants impeded his access to the court in violation of his civil rights. On August 26, 2022, plaintiff filed a motion for transfer to federal prison. (ECF No. 10.) This document contains two parts: (1) an appeal to the Ninth Circuit for a denial of an unidentified writ of habeas corpus, and (2) a request that this court order plaintiff be moved to a federal prison. (Id.) As only plaintiff's motion for transfer appears to be the only portion of this document before the court, the undersigned will only address this motion.

The relief requested in plaintiff's motion is unavailable. The federal Bureau of Prisons is responsible for housing individuals sentenced in federal court. See 18 U.S.C. § 3621. Plaintiff does not appear to have an outstanding federal sentence nor has plaintiff indicated there is one. Regardless, for the judiciary to order an inmate be transferred from state custody to federal custody would be a violation of comity and the separation of powers. See United States v. Warren, 610 F.2d 680, 684-85 (9th Cir. 1980); see also Hill v. Newsom, No. 2:19-cv-1680 JAM

1 AC P, 2021 WL 3032808 at *1 (E.D. Cal. July 19, 2021). “Determination of priority of custody
2 and service of sentence between state and federal sovereigns is a matter of comity to be resolved
3 by the executive branches of the two sovereigns.” Id. at 684. As such, it would be improper for
4 the court to issue such an order as it is outside the authority of the federal court and would violate
5 the principles of comity and separation of powers.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for transfer to federal
7 prison (ECF No. 10) is denied.

8 Dated: January 25, 2023

9
10 
11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE
13
14
15
16
17

18 DB:14
DB/DB Prisoner Inbox/Civil Rights/R/walk1327.fedtransfer
19
20
21
22
23
24
25
26
27
28